

FEDERAL COMMUNICATIONS COMMISSION

Federal Communications Commission

DA 00-2116

SEP 13 8 44 AM '00

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Oswego and Granby, New York)

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MM Docket No. 00-169
RM-9953

NOTICE OF PROPOSED RULE MAKING

Adopted: September 6, 2000

Released: September 15, 2000

Comment Date: November 6, 2000

Reply Comment Date: November 21, 2000

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a petition for rule making filed on behalf of Galaxy Communications, L.P. ("Galaxy"), licensee of Station WTKV(FM), Oswego, New York, seeking to amend the FM Table of Allotments by reallocating Channel 288A from Oswego to Granby, New York and modifying its authorization accordingly. Galaxy has stated its intention to apply for Channel 288A if it is reallocated to Granby.

2. Galaxy seeks to invoke the provisions of Section 1.420(i) of the Commission's rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.¹ In support of its proposal, Galaxy explains that the requested reallocation from Oswego to Granby is mutually exclusive with its existing authorization. Galaxy claims that the distance between the reference point for Oswego and Galaxy's specified site at Granby is 20.66 kilometers (12.84 miles) whereas the Commission's Rules require a 115 kilometer spacing between co-channel Class A stations. Further, Galaxy observes that the town of Granby was incorporated in 1818, has a population of over 7,000 persons² and clearly possesses sufficient characteristics which demonstrate that it is a "community" entitled to an FM allotment pursuant to Section 307(b) of the Communications Act of 1934, as amended ("the Act.") Galaxy asserts that Granby is a separate and distinct municipality with a town government composed of elected and appointed officials, including a Town Supervisor, Town Board, Town Attorney, and a Zoning Board of Appeals. In addition, Galaxy notes that Granby has its own

¹ See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

² The 1990 United States Census lists Granby's population at 7,013.

Highway Department, several churches, the Granby elementary School, two local fire departments, at least thirteen retail and other local businesses and many manufacturing and industrial types of business.

Galaxy adds that Granby residents pay Granby town taxes and have their own local court system. In light of the foregoing, we agree that Granby is a community entitled to an FM allotment pursuant to Section 307(b) of the Act.

3. Galaxy asserts that the adoption of its proposal will result in a preferential arrangement of allotments consistent with the Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1992),³ by providing Granby with its first local aural transmission service. Galaxy also notes that the public interest benefits derived from granting Granby its first local transmission service far outweigh any benefits of retaining Channel 288A in Oswego. Our engineering staff finds that the gain area resulting from reallocating Channel 288A to Granby contains 134,746 people and covers 849 square kilometers, which represents a net gain of 132,516 people and 746 kilometers of land being served. The loss area at Oswego resulting from the reallocation of Channel 288A to Granby has 2,230 persons and an area of 103 square kilometers. This area is already covered by at least five other full-time reception services and thus is a well served area. There is one very small section of the gain area of Channel 288A at Granby that is presently receiving only four full-time services and it contains 437 people and covers 11 square kilometers. The remainder of the gain area is presently covered by at least five full-time reception services and thus is well served. We note that the reallocation of Channel 288A to Granby would not deprive Oswego of its sole local transmission outlet because Oswego is currently served by four local transmission services in addition to Station WTKV(FM).

4. In accordance with Commission policy, if a rulemaking proponent intends to move its authorized facility to a community that is adjacent to an urbanized area and if its intended operation would place a city grade (70 dBu) signal over 50 percent or more of the urbanized area, the proponent is required to demonstrate that the intended city of license is sufficiently independent of the central city to justify a first local service preference.⁴ We recognize that Granby is not located within an urbanized area. The proposed facility for Channel 288A at Granby would cover 4.5 percent of the Syracuse, New York urbanized area with its 70 dBu contour. Therefore, Galaxy need not provide additional information responsive to a Tuck analysis to determine whether Granby is sufficiently independent of Syracuse to merit a first local service preference.⁵ In light of the foregoing, we believe that Galaxy's proposal warrants consideration since the allotment of Channel 288A to Granby would provide a first local aural transmission service to Granby.

5. Since Galaxy's reallocation request is consistent with the provisions of Section 1.420(i) of the Commission's Rules, we shall propose to modify the authorization of Station WTKV(FM) without entertaining competing expressions of interest in the use of Channel 288A at Granby, New York, or requiring Galaxy to demonstrate the availability of an additional equivalent channel for use by other

³ The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service and (4) other public interest matters [co-equal weight is given to priorities (2) and (3)].

⁴ See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995).

⁵ See Huntington Broadcasting Co. v. F.C.C., 192 F. 2d 33 (D.C. Cir. 1951), RKO General, Inc. ("KFRC"), 5 FCC Rcd 3222 (1990), and Faye and Richard Tuck ("Tuck"), 3 FCC Rcd 5374 (1988).

parties.

6. Channel 288A can be allotted to Granby, New York, consistent with the technical requirements of the Commission's Rules, at Galaxy's specified site, utilizing coordinates 43-17-00 and 76-25-00. Granby is located within 320 kilometers (199 miles) of the U.S.-Canadian border and the allotment at the proposed coordinates would be short-spaced to the Canadian allotment for Channel 289B at Kingston, Ontario. Therefore, concurrence by the Canadian Government in this allotment, as a specially negotiated short-spaced allotment, must be obtained.

7. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel Nos.</u>	
	<u>Present</u>	<u>Proposed</u>
Oswego, New York	244A, 288A	244A
Granby, New York	-----	288A

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before November 6, 2000, and reply comments on or before November 21, 2000, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW; TW-A325, Washington, D.C. 20554.

Additionally, a copy of such comments should be served on Galaxy's counsel, as follows:

Sally A. Buckman
H. Anthony Lehv
Janet Y. Shih
Leventhal, Senter & Lerman P.L.L.C.
2000 K Street, N.W., Suite 600
Washington, D.C. 20006-1809

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact R. Barthen Gorman, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment, which has not been served on the petitioner, constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment that has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's

Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.